COMMONWEALTH of VIRGINIA

Matthew J. Strickler
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY
Blue Ridge Regional Office
901 Russell Drive, Salem, VA, 24153
(540) 562-6700; Fax (540) 562-6725
www.deq.virginia.gov

David K. Paylor
Director

Robert J. Weld
Regional Director

VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
BOHLING STEEL INC.
FOR
BOHLING STEEL INC.'S
LYNCHBURG, VA FACILITY
EPA ID No. VAR000534685

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board, and Bohling Steel Inc., regarding its facility in Lynchburg, Virginia, for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.

2. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Salem, Virginia.

3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

6. "Facility" or "Site" means the Bohling Steel Inc. owned and operated facility located at 3410 Forest Brook Road, Lynchburg, VA 24501.

7. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.

8. "Hazardous Waste" or "HW" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.

9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

10. "Order" means this document, also known as a "Consent Order" or "Order by Consent."

11. "The Owner" means Bohling Steel Inc., a corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. The Owner is a "person" within the meaning of Va. Code § 10.1-1400.

12. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effected date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.

13. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.

14. "SQG" means a small quantity generator, a hazardous waste generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(d)-(f).

15. "Va. Code" means the Code of Virginia (1950), as amended.

16. "VAC" means the Virginia Administrative Code.

17. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

18. "VSQG" means a very small quantity generator of hazardous waste, a generator of less than 100 kilograms of hazardous waste in a month and meeting the other restrictions of 40 CFR § 261.5 and 9 VAC 20-80-120(A).

SECTION C: Findings of Fact and Conclusions of Law

1. The Owner owns and operates the Facility in Lynchburg, Virginia. The Owner fabricates structural steel, specializing in fabricating, welding and painting structural steel. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. At the Facility, the Owner generates hazardous waste in the form of waste paint and solvent mixtures and waste paint chips. Regulated wastes generated at the Facility include paint overspray, spent aerosol cans, shavings and water-based cutting fluid, solvent contaminated wipes, spent paint containers, and scrap metal and shavings. Universal waste generated include spent fluorescent lamps.

3. On January 17, 2019, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act and the Regulations. The Facility was evaluated during the inspection as a SQG. Based on the inspection and follow-up information, Department staff made the following observations.

4. At the time of the inspection, the Owner had not obtained an EPA Identification Number as required by 40 CFR 262.18(a).

5. Based on documentation provided by the Owner, all shipments of hazardous waste offered for transport were shipped utilizing a bill of lading. SQGs must ship their hazardous waste on a hazardous waste manifest. 40 CFR 262.20(a)(1) requires a generator who transports, or offers for transport a HW for offsite treatment, storage, disposal or a treatment, storage and disposal ("TSD") facility….must prepare a Manifest on EPA Form 8700-22.

6. At the time of the inspection, documentation was provided for all shipments of hazardous waste made by the Owner beginning in June 2017.

    a. Between 01/2017 and 06/2018, the Owner made nine shipments of hazardous waste. These shipments were made using a bill of lading and the receiving facility, Heritage Crystal Clean ("HCC") in Fairless Hills, Pennsylvania was identified with EPA ID number ILR000130062. This EPA ID number is associated with a HCC facility in Elgin, Illinois that is currently notified only as a hazardous waste transporter. The HCC Fairless Hills location is assigned EPA ID number PAR000507079 and the facility is registered as a Large Quantity Generator of hazardous waste, but is not a permitted transfer/storage/disposal facility (TSDF).

b. Between 07/2018 and 01/2019, the Owner made six shipments of hazardous waste. These shipments were also made using HCC's hazardous waste transporter EPA ID number ILR000130062 and a bill of lading. The receiving facility was identified as HCC in Pennsauken, New Jersey (EPA ID number ILR000130062). The HCC Pennsauken location is assigned EPA ID number NJR986656650 and the facility is registered as a transporter of hazardous waste, but is not a permitted TSDF.

The Owner was not able to provide documentation demonstrating how its waste was managed or ultimately disposed after arriving at either the HCC Fairless Hills facility or the HCC Pennsauken facility. 40 CFR 262.10(a)(3) requires that a generator shall not transport, offer its hazardous waste for transport, or otherwise cause its hazardous waste to be sent to a facility that is not a designated facility, as defined in §260.10 of this chapter, or not otherwise authorized to receive the generator's hazardous waste.

7. 40 CFR 268.7(a)(1) requires that a generator of hazardous waste must determine if their waste has to be treated to meet the treatment standards in Part 268 prior to land disposal. At the time of the inspection, the Owner was unable to demonstrate that a determination had been made.

8. The Owner operates two satellite accumulation areas ("SAAs") in the outdoor painting area. At the time of the inspection, neither satellite container was closed and waste was not actively being added or removed from either container. 40 CFR 262.15 (a)(4) allows a generator to accumulate as much as 55 gallons of non-acute hazardous waste in containers at or near any point of generation provided that a container holding hazardous waste is closed at all times during accumulation, except when adding, removing, or consolidating waste; or when temporary venting of a container is necessary.

9. At the time of the inspection, neither SAA container noted in Paragraph #8 was labeled with the term "Hazardous Waste". 40 CFR 262.15 (a)(5)(i) states that a generator may accumulate as much as 55 gallons of non-acute hazardous waste in containers at or near any point of generation where wastes initially accumulate provided that a generator mark or label its container with the words "Hazardous Waste".

10. At the time of the inspection, neither SAA container noted in Paragraph #8 was labeled with an indication of the hazards of their contents. 40 CFR 262.15 (a)(5)(ii) states that a generator may accumulate as much as 55 gallons of non-acute hazardous waste in containers at or near any point of generation where wastes initially accumulate provided that a generator mark or label its container with an indication of the hazards of the contents.

11. At the time of the inspection, there were no fire extinguishers present in the area where the Owner operates its SAAs. Additionally, there did not appear to be any fire suppression equipment such as sprinklers or water spray systems as required to meet the preparedness and prevention requirements for an SAA. 40 CFR 262.15(a)(7) requires that all satellite accumulation areas operated by a small quantity generator must meet the

preparedness and prevention regulations of §262.16(b)(8) and emergency procedures at §262.16(b)(9).

12. At the time of the inspection, the Owner was unable to demonstrate that all employees were trained in proper waste handling and emergency procedures. Owner representatives stated that some employees had received OSHA emergency response training. OSHA training can serve in lieu of RCRA SQG training when it includes specific Emergency Preparedness and Contingency information for its facility. 40 CFR 262.16(b)(9)(iii) requires that a small quantity generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

13. The Owner was unable to provide documentation demonstrating attempts had been made to familiarize the local police department, fire department, and other emergency response teams, with the layout of the Facility and its associated hazards; or to make arrangements with the previously listed organizations and emergency response contractors, equipment suppliers and/or local hospitals. 40 CFR 262.16(b)(8)(vi)(A) requires that a small quantity generator must attempt to make arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility. Arrangements may be made with the Local Emergency Planning Committee, if it is determined to be the appropriate organization with which to make arrangements.

14. The Owner occasionally generates waste aerosol cans as a result of business activities. These cans are managed as solid waste when fully discharged and discarded in the trash. At the time of the inspection, the Owner had not made a hazardous waste determination on the waste aerosol cans. 40 CFR 262.11 requires that a person who generates a solid waste, as defined in 40 CFR 261.2, must make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable RCRA regulations.

15. On February 26, 2019, based on the inspection and follow-up information, the Department issued NOV No. NOV-19-02-BRRO-004 to the Owner for the violations described in paragraphs C(4) through C(14), above.

16. On March 5, 2019, Department staff and the Owner discussed the NOV and a plan of action to address the areas of non-compliance.

17. The Owner submitted additional information to the Department on June 17, 2019 indicating that all the areas of non-compliance had been addressed and corrected.

18. Based on the results of the January 17, 2019 inspection and follow-up information, the Board concludes that has violated 40 CFR 262.18(a), 40 CFR 262.20(a)(1), 40 CFR 262.10(a)(3), 40 CFR 268.7(a)(1), 40 CFR 262.15 (a)(4), 40 CFR 262.15(a)(5)(i) & (ii),

40 CFR 262.15(a)(7), 40 CFR 262.16(b)(9)(iii), 40 CFR 262.16(b)(8)(vi)(A), and 40 CFR 262.11, as described in paragraphs C(4) through C(14), above.

19. The Owner has submitted documentation that verifies that the violations described in paragraphs C(4) through C(14), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders the Owner, and the Owner agrees to pay a civil charge of **$12,320** in settlement of the violations cited in this Order. The civil charge payment shall be paid in accordance with the following schedule:

Due Date	Amount
July 1, 2020	**$1,540 or balance**
October 1, 2020	**$1,540 or balance**
January 1, 2021	**$1,540 or balance**
April 1, 2021	**$1,540 or balance**
July 1, 2021	**$1,540 or balance**
October 1, 2021	**$1,540 or balance**
January 1, 2022	**$1,540 or balance**
April 1, 2022	**$1,540 or balance**

If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by the Owner. Within 15 days of receipt of such letter, the Owner shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The Owner shall include its Federal Employer Identification Number (FEIN) **-******** with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the

Department of Law, the Owner shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the Owner for good cause shown by the Owner, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, the Owner admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact, and conclusions of law contained in this Order.

4. The Owner consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. The Owner declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by the Owner to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. The Owner shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The Owner shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Owner shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are

occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

a. the reasons for the delay or noncompliance;

b. the projected duration of any such delay or noncompliance;

c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and the Owner. Nevertheless, the Owner agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

a. The Director or his designee terminates the Order after the Owner has completed all of the requirements of the Order;

b. The Owner petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the Owner.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Owner from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the Owner and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

15. By its signature below, Bohling Steel Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 28th day of May, 2020.

Robert J. Weld, Regional Director
Department of Environmental Quality

Bohling Steel Inc. voluntarily agrees to the issuance of this Order.

Date: 4/22/2020 By: _____, President
Mark A. Bohling.
Bohling Steel Inc.

Commonwealth of Virginia
City/~~County~~ of Lynchburg

The foregoing document was signed and acknowledged before me this 22 day of April, 2020, by Mark A. Bohling, who is the President of Bohling Steel Inc, on behalf of the corporation.

Kathryn P. Viar
Notary Public

299535
Registration No.

My commission expires: March 31, 2021

Notary seal: